

**Keenan D. White,** )  
) )  
Plaintiff, )  
) )  
v. ) **No. CIV 07-85-FHS**  
) )  
**Ron Ward, et. al.,** )  
) )  
Defendants. )


Now before the court is the defendants’ Ron Ward, David Strobridge, Marty Sirmons, Rick Caywood, Daryl Wilson, Mike Mullins, John Klink, R. Kelly, Brad Mattioda, Larry Giles, Kameron Harvanek, and Curtis Hood’s (defendants) Motion to Dismiss. The court rules as follows on the motion.

Defendants have argued they are immune from liability in their official capacity due to the Eleventh Amendment. It is well settled law that defendants are immune from damages in their official capacity because a suit against a state official in his or her official capacity is, in fact, a suit against the state itself. Kentucky v. Graham, 473 U.S. 159, 165-66 (1985).

Accordingly, the motion to dismiss is granted in part and denied in part. It is denied

as it applies to Marty Sirmons, Rick Caywood, Daryl Wilson, Mike Mullins, John Klink, Kameron Harvanek, and Curtis Hood for failure to serve. It is granted as to these defendants as to the issue of an official capacity suit. Defendants Sirmons, Caywood, Wilson, Mullins, Klink, Harvanek and Hood are hereby dismissed from this lawsuit in their official capacity.

IT IS SO ORDERED this 22<sup>nd</sup> day of July, 2008.



Frank H. Seay  
United States District Judge